

**Pontiac Osteopathic Hospital d/b/a POH Medical Center and International Union, United Automobile, Aerospace and Agricultural Workers of America (UAW), AFL-CIO. Case 7-CA-42923**

June 22, 2000

**DECISION AND ORDER**

**BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND BRAME**

Pursuant to a charge and an amended charge filed on March 30 and April 13, 2000, respectively, the General Counsel of the National Labor Relations Board issued a complaint on April 17, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 7-RC-21183. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 15, 2000, the General Counsel filed a Motion for Summary Judgment. On May 17, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election and its contention in the representation proceeding that its registered and charge nurses are statutory supervisors and should therefore be excluded from the unit. In addition, the Respondent, in its answer denies that the information requested by the Union is necessary and relevant. All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find there are no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent admits, that the Union requested the following information from the Respondent.

A list of all employees covered by the bargaining unit, their addresses, social security numbers, classifications, dates of hire, wage scales as well as copies of all benefit plans, and summary plan descriptions. It is well established that, with the exception of employee social security numbers, such information is presumptively relevant for purposes of collective bargaining and must be furnished on request.<sup>1</sup>

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested, with the exception of employee social security numbers.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a nonprofit Michigan corporation with an office and facility in Pontiac, Michigan (the Pontiac facility), has been engaged in the operation of an acute care hospital.

During the calendar year ending December 31, 1999, the Respondent, in conducting its operations, derived gross revenues in excess of \$250,000 and purchased goods and materials valued in excess of \$50,000 from points located outside the State of Michigan, and caused said goods and materials to be shipped directly to its Pontiac facility.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

*A. The Certification*

Following the election held March 19, 1998, the Union was certified on September 14, 1999, as the exclusive

<sup>1</sup> The Board has held that employee social security numbers are not presumptively relevant and that the Union must therefore demonstrate the relevance of such information. See, e.g., *Dexter Fastener Technologies*, 321 NLRB 612 (1996); and *Maple View Manor*, 320 NLRB 1149 (1996). Here, the record fails to indicate why the Union wanted the social security numbers or otherwise establish the relevance of the numbers. Accordingly, we cannot conclude that the Respondent was obligated to provide the numbers to the Union. This does not excuse the Respondent's failure to supply all of the other information requested by the Union. In its answer, the Respondent denies that this requested information is necessary for and relevant to the Union's performance of its duties. We note, however, that the description of the information sought on its face relates directly to the wages, hours, and terms and conditions of employment of the unit employees and we so find. In addition, the Respondent has not attempted to rebut the relevance of the information in response to the Notice to Show Cause. Accordingly, we find that the Respondent's denial does not raise any issues warranting a hearing and the Respondent's failure to provide the information on request violated Sec. 8(a)(5) of the Act. See *Maple View Manor*, 320 NLRB 1149 (1996); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1997).

collective-bargaining representative of the employees in the following appropriate unit:

All full-time, regular part-time, and contingent RNs and charge nurse RNs employed by Respondent at its facility located at 50 N. Perry Street, Pontiac, Michigan; but excluding physicians, skilled maintenance employees, technical employees, other professional employees, business office clerical employees, managerial employees including case managers and nurse educators, non-professional employees, guards and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### *B. Refusal to Bargain*

On December 9, 1999, the Union, by letter, requested the Respondent to bargain and to furnish information, and since December 14, 1999, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By failing and refusing on and after December 14, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, with the exception of employee social security numbers, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested, with the exception of employee social security numbers.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, Pontiac Osteopathic Hospital d/b/a POH Medical Center, Pontiac, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Workers of America, (UAW), AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time, regular part-time, and contingent RNs and charge nurse RNs employed by Respondent at its facility located at 50 N. Perry Street, Pontiac, Michigan; but excluding physicians, skilled maintenance employees, technical employees, other professional employees, business office clerical employees, managerial employees including case managers and nurse educators, non-professional employees, guards and supervisors as defined in the Act, and all other employees.

(b) Furnish the Union the information that it requested on December 9, 1999, with the exception of employee social security numbers.

(c) Within 14 days after service by the Region, post at its facility in Pontiac, Michigan, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 14, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER BRAME, dissenting.

In the underlying representation proceeding, I dissented from my colleagues' denial of the Employer's request for review of the Regional Director's determination that the Employer's charge nurses were employees and not statutory supervisors. Accordingly, I dissent here from my colleagues' granting the General Counsel's Motion for Summary Judgment and their finding that the Employer violated Section 8(a)(5) and (1) of the Act.

#### APPENDIX

##### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union, United Automobile, Aerospace and Agricultural Workers of America, (UAW), AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time, regular part-time, and contingent RNs and charge nurse RNs employed by us at our facility located at 50 N. Perry Street, Pontiac, Michigan; but excluding physicians, skilled maintenance employees, technical employees, other professional employees, business office clerical employees, managerial employees including case managers and nurse educators, non-professional employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL furnish the Union the information it requested on December 9, 1999, with the exception of employee social security numbers.

PONTIAC OSTEOPATHIC HOSPITAL  
D/B/A POH MEDICAL CENTER